

ROBERT E. DAWSON
KENNETH E. DAWSON

IBLA 83-311

Decided April 3, 1984

Appeal from decision of California State Office, Bureau of Land Management, declaring lode mining claims null and void ab initio. CA MC 32519 and CA MC 32520.

Affirmed.

1. Mining Claims: Lands Subject to--Mining Claims: Withdrawn
Land--Withdrawals and Reservations: Effect of

A mining claim located upon lands withdrawn from mineral entry by a Secretarial order for the benefit of the Mission Indians is properly declared null and void ab initio.

APPEARANCES: Robert E. Dawson and Kenneth E. Dawson, pro sese.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Robert E. Dawson and Kenneth E. Dawson have appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated December 22, 1982, declaring the Fargo and El Molino lode mining claims, CA MC 32519 and CA MC 32520, null and void ab initio.

Appellants' mining claims were located January 1, 1904, and filed for recordation with BLM on August 20, 1979, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(b) (1976). The claims are situated in sec. 19, T. 9 S., R. 1 W., and secs. 24 and 25, T. 9 S., R. 2 W., San Bernardino meridian, San Diego County, California. In its December 1982 decision, BLM declared appellants' mining claims null and void ab initio because they were located on land which was closed to mineral entry by Secretarial order dated January 24, 1903, for the Mission Indian Reservation.

In their statement of reasons for appeal, appellants contend that it would be "unjust" to declare their claims null and void after 78 years from the original location date "1-1-1904." Appellants note that all assessment work has been done and that the claims provide access to two other claims, presumably the White Queen (CA MC 32518) and Vandenberg (CA MC 32521) lode mining claims.

[1] The record indicates the subject land was temporarily withdrawn from settlement and entry by two Secretarial orders, dated January 24, 1903 (secs. 24 and 25), and April 8, 1903 (sec. 19), for the purpose of determining which land could be granted to the Mission Indians. The withdrawal orders were to continue "until further notice." The relevant master title plats included in the record indicate that the withdrawal orders still apply to the subject land.

It is well established that mining claims located at a time when land is closed to mineral entry are properly declared null and void ab initio. Rick Anderson, 76 IBLA 212 (1983); Steve Foster, 56 IBLA 282 (1981). Moreover, no property rights are created by the location of a mining claim on land which is not then available for mineral entry. United States v. Consolidated Mines & Smelting Co., 455 F.2d 432 (9th Cir. 1971); Dredge Corp. v. Penny, 362 F.2d 889 (9th Cir. 1966). Such a claim is void from its inception and cannot be resurrected by the fact that the claimant and his predecessors in interest have held and worked the claim for 78 years. Arthur W. Boone, 32 IBLA 305 (1977). Accordingly, we conclude BLM properly declared appellants' mining claims null and void ab initio.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

